BLANK

PAGE

LIBRARY
SUPREME COURT

No. 65

Office Supreme Court, U.S.
FILED
JAN 26 1966
JOHN F. DAVIS, CLERK

IN THE 1966

Supreme Court of the United States

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

On Appeal from the Supreme Court of the State of Georgia.

JURISDICTIONAL STATEMENT.

EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.,
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

Of Counsel:
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303

Of Counsel:
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770
West Palm Beach, Florida 33402

BLANK

PAGE

INDEX

	Page
Introduction	1
Opinion below	1
Basis of jurisdiction	2
Questions presented	3
Statement of the case	3
Substantial federal questions are presented	5
Conclusion	27
Proof of service	28
Appendix A — Opinion of the court below	29
Appendix B — Judgment of the court below	30

Cases Cited

Christmas v. *Russell*, 72 U.S. (5 Wall.) 290 (1866) ... 10

Douglas v. *New York, N.H. & H. R.R.*, 279 U.S. 377 (1929) ... 16

Easterlin v. *New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902) ... 5

Fauntleroy v. *Lum*, 210 U.S. 230 (1908) ... 6

Great Western Tel. Co. v. *Purdy*, 162 U.S. 329 (1896) ... 11

Hughes v. *Fetter*, 341 U.S. 609 (1951) ... 21

Kenney v. *Supreme Lodge of the World*, 252 U.S. 411 (1920) ... 10

Kentucky Fin. Corp. v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923) ... 22

Martin v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816) ... 2

Cases Cited (Continued)

Page

McKnett v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934) . . 16

M'Elmoyle v. *Cohen*, 38 U.S. (13 Pet.) 312 (1839) . . 6, 8

Metcalf v. *City of Watertown*, 153 U.S. 671 (1894) . . 11, 17

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268 (1935) 7, 19

Mondou v. *New York, N.H. & H. R.R.*, 223 U.S. 1 (1912) 15

Power Mfg. Co. v. *Saunders*, 274 U.S. 490 (1927) 24

Roche v. *McDonald*, 275 U.S. 449 (1928) 7

Testa v. *Katt*, 330 U.S. 386 (1947) 15

Union Trust Co. v. *Grossman*, 245 U.S. 412 (1918) 6

Walters v. *City of St. Louis*, 347 U.S. 231 (1954) 20

Waterman v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887) 17

Watkins v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949) 20

Wells v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) 12, 13

Constitutional Provisions and Statutes Cited

Art. IV, § 1 United States Constitution 2, 4, 13

Amend. XIV, § 1 United States Constitution 2, 4

28 U.S.C. § 1257(2) 2

28 U.S.C. § 1738 . . . . . 2, 4

Ga. Code § 3-701 (1933) 3, 4, 5, 6, 18, 19, 21, 26

Statutes Cited (Continued)

Page

Ga. Code § 110-1001 (1933), as amended by 1955 Ga. Laws, pp. 417, 418 ..... 4, 5

Ga. Code § 110-1002 (1933) 4, 5

Miscellaneous

CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963) 27

Currie *The Constitution and the "Transitory" Cause of Action*, 73 *HARV. L. REV.* 36 (1959) 22

BLANK

PAGE

No. . . . .

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT D. WATKINS,
Appellant,

versus

J. F. CONWAY,
Appellee.

On Appeal from the Supreme Court of the State of Georgia.

JURISDICTIONAL STATEMENT

INTRODUCTION

Appellant appeals from the judgment of the Supreme Court of the State of Georgia, entered in this action on September 22, 1965, dismissing appellant's suit on a Florida judgment, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Georgia is reported in *Watkins* v. *Conway*, 221 Ga. 374, 144 S.E.2d 721 (1965), and is attached hereto as Appendix A.

BASIS OF JURISDICTION

This action was brought pursuant to 28 U.S.C. § 1738, and the common law of Georgia by Robert D. Watkins, appellant herein, to enforce a Florida judgment against J. F. Conway, appellee herein. Appellee defended on grounds that the five-year statute of limitations against foreign judgments, Ga. Code § 3-701, had run by one day, to which defense appellant interposed the objection that said statute was void and unconstitutional, in that it deprived appellant both of the guaranty of full faith and credit provided foreign judgments by Article IV, § 1, of the United States Constitution, and also, of the equal protection of the laws guaranteed by Amendment XIV, § 1, of the United States Constitution. Judgment of the Supreme Court of the State of Georgia, a copy of which is attached hereto as Appendix B, was dated and entered on September 22, 1965, affirming the trial court's decision that said statute was constitutional, and dismissing appellant's case. Motion for rehearing was filed by appellant on September 30, 1965, which motion the Georgia Supreme Court denied by order dated and entered October 7, 1965. Notice of appeal was filed in that court on November 29, 1965.

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by 28 U.S.C. § 1257(2). The following decision sustains the jurisdiction of the United States Supreme Court to review on direct appeal the judgment in this case. *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

The statute, the validity of which is challenged by

appellant in this appeal is Ga. Code § 3-701 (1933), which provides:

> "Suits upon foreign judgments. — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

QUESTIONS PRESENTED

I.

Whether consistently with the full faith and credit clause, Georgia may apply a five-year statute of limitations to bar the enforcement of a foreign judgment while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an additional period of five years?

II.

Whether under the equal protection clause Georgia may discriminate against judgments rendered in the courts of other states, solely on the basis of their foreign origin, by applying a shorter five-year statute of limitations to such judgments while permitting enforcement of Georgia judgments rendered at the same time under similar circumstances for an additional five-year period?

STATEMENT OF CASE

On October 5, 1955, the appellant, Robert D. Watkins, obtained a judgment against appellee, J. F. Conway, in the Circuit Court of the 15th Judicial District of the

State of Florida. Thereafter, on October 5, 1960, five years and one day after the entry of this judgment, the appellant brought suit against appellee on this Florida judgment in the Superior Court of Fulton County, Georgia, pursuant to 28 U.S.C. § 1738 and the common law of Georgia. The action was barred by a five-year statute of limitations which Georgia imposes upon all suits upon foreign judgments [Ga. Code § 3-701 (1933)], although a Georgia judgment obtained on the same date would have continued to have been enforceable under Ga. Code § 110-1001, and § 110-1002.

The appellee pleaded the five-year statute of limitations prescribed by Ga. Code § 3-701 (1933). (R. pp. 49-50). Appellant moved to strike the plea of the statute of limitations on grounds that Ga. Code § 3-701 was unconstitutional and void, since it sought to discriminate against foreign judgments by denying enforcement under circumstances in which enforcement of a Georgia judgment would be permitted, and, therefore, violated the full faith and credit clause (Art. IV, § 1, U. S. Const.) and the equal protection clause (Amend. XIV, § 1, U. S. Const.) of the Constitution. (R. pp. 57-63). On June 1, 1965, the Superior Court of Fulton County granted appellee's motion for summary judgment on the sole ground that the Florida Judgment was barred by the five-year statute of limitations of Ga. Code § 3-701, which the court found to be constitutional. (R. pp. 64-65). Appellant's motion to strike was denied. (R. pp. 64-65).

The appellant took a timely appeal to the Supreme Court of Georgia urging the unconstitutionality of the application of the five-year statute of limitations to bar the enforcement of the Florida judgment. (R.

pp. 10-11). On September 22, 1965, after oral argument, the Supreme Court of Georgia affirmed the decision of the trial court upholding the constitutionality of the statute. (R. pp. 68-69). Although the Georgia Supreme Court recognized that the effect of its decision was to deny enforcement of appellant's Florida judgment under circumstances in which a Georgia judgment obtained at the same time would have been enforced, the court, nevertheless, held that the shorter period of limitations violated neither the full faith and credit clause nor the equal protection clause of the Constitution. Appellant's motion for rehearing was denied without opinion on October 7, 1965.

SUBSTANTIAL FEDERAL QUESTIONS ARE PRESENTED

Under Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418, and Ga. Code § 110-1002 (1933), a Georgia judgment remains enforceable for a period of ten years without the requirement of any action on the plaintiff's part.[1] But by virtue of the statute in question, Ga. Code § 3-701 (1933), a foreign judgment becomes unenforceable after five years. It is clear, therefore, that the State of Georgia has discriminated *against foreign judgments* in favor of its own judgments. It is appellant's contention that such *discrimi-*

[1] If within seven years the holder of the Georgia domestic judgment merely issues an execution (attempts to levy) upon the judgment, and records the execution upon the general execution docket, the judgment will be renewed for another seven years, and this process may be repeated indefinitely. Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418. See *Easterlin v. New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902). If no action is taken within seven years, then the domestic judgment becomes dormant, but the holder may revive it by bringing suit on said judgment within three years. Ga. Code § 110-1002 (1933).

nation deprives him both of the full faith and credit guaranteed foreign judgments and also of the equal protection of the laws to which he is entitled under the Constitution of the United States.

A. Georgia Code § 3-701 (1933), which Provides a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Violates the Guaranty Provided Foreign Judgments by the Full Faith and Credit Clause of the Constitution.

The appellant does not question the right of a state to apply a statute of limitations to foreign judgments [*M'Elmoyle* v. *Cohen,* 38 U.S. (13 Pet.) 312 (1839)], so long as it does so evenhandedly without discrimination. However, the full faith and credit clause does prohibit a state from discriminating against judgments rendered by the courts of sister states by imposing a shorter period of enforceability to foreign judgments than is applicable to domestic judgments rendered at the same time under similar circumstances.

It is well established that a state may, for reasons of public policy, close its courts to *suits on causes of action* which the state deems contrary to its public policy. *Union Trust Co.* v. *Grossman,* 245 U.S. 412 (1918). However, the policy of the full faith and credit clause is much stronger with reference to *judgments.* A forum state may not refuse to enforce a judgment validly rendered by the courts of a sister state even though the judgment is based on a cause of action which the plaintiff was absolutely prohibited from maintaining in the forum. Thus, in *Fauntleroy* v. *Lum,* 210 U.S. 230 (1908); the Mississippi Supreme Court re-

fused to enforce a Missouri judgment under the full faith and credit clause, because the Missouri judgment was based on a gambling claim, which gambling had taken place exclusively in Mississippi, between residents of that state, and which was in violation of laws embodying the public policy of Mississippi. A suit based on gambling could not be maintained in Mississippi in the first instance. Mississippi refused to enforce the judgment on the grounds that its own courts had no authority to enforce the underlying transaction. Holding the enforcement of the Missouri judgment to be required by the full faith and credit clause, this Court said at 237:

> "A judgment is conclusive as to all the *media concludendi* . . . and it needs no authority to show that it cannot be impeached either in or out of the state by showing that it was based upon a mistake of law. . . . [T]he judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law."

Compare *Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268 (1935). Similarly in *Roche* v. *McDonald*, 275 U.S. 449, 451-52 (1928), this Court stated:

> "It is settled by repeated decisions of this Court that *the full faith and credit clause of the Constitution requires that the judgment of a State court* which had jurisdiction of the parties and the subject-matter in suit, *shall be given in the courts of every other State the same credit, validity and effect which it has in the State where it was rendered, and be equal-*

> *ly conclusive upon the merits, and that only such defenses as would be good to a suit thereon in that State can be relied on in the courts of any other State.*" (Emphasis added)

Thus, it can be seen that the full faith and credit clause requires the State of Georgia to give the *same effect* to a Florida judgment, that the State of Florida itself would give.

However, as stated previously, the State of Georgia can apply a reasonable statute of limitations to foreign judgments, as long as it applies the same period of limitations to the enforcement of its own judgments. Otherwise stated, the State of Georgia may apply a statute of limitations on foreign judgments if and only if the statute of limitations would not discriminate in favor of Georgia judgments — that is, only if Georgia judgments are not allowed to be enforced for a longer period of time than foreign judgments. Thus, in *M'Elmoyle* v. *Cohen,* 38 U.S. (13 Pet.) 312 (1839), this Court held that the forum state (Georgia) might apply its own statute of limitations to a foreign judgment. The Court based its holding on the reasoning *that the statute of limitations was a plea to the remedy, not to the merits of the cause of action,* and consequently, would bar the cause.[2] The Court's rationale was that the

---

[2]This case involved substantially the same Georgia statute (prior to minor amendments) involved in the instant case. However, the only argument presented in that case was the right of Georgia to prescribe any limitation at all upon the right of the holder of a foreign judgment to sue in Georgia courts. Plaintiff argued that the State of Georgia had no right to place *any* limitation upon the enforcement of foreign judgments, and this argument was rejected. In rebutting this argument, both defendant and the Court noted (in dicta) that the

forum state may legislate limitations upon the remedy, (i.e., procedural limitations), although it could not legislate any limitations upon the merits of the foreign judgment. The Court stated at 328:

> "[T]here is no direct constitutional inhibition upon the States, nor any clause in the Constitution from which it can be even plausibly inferred that the States may not legislate upon the remedy in suits upon the judgments of other States, exclusive of all interference with their merits. . . .
>
> [T]he effect intended to be given under our Constitution to judgments [of other states] is that they are conclusive only as regards the merits. . . ."

Subsequent cases have upheld the viewpoint that states may, consistent with full faith and credit, legislate upon the remedy in regard to the enforcement of foreign judgments and causes of action, but only if the foreign judgment or cause of action is not discriminated against. Where such discrimination exists the guaranty of full faith and credit is violated.

State of Georgia had the power to place a limitation upon the period of enforcement of its own judgments, and consequently, should have the power to place a limitation upon foreign judgments. While this Court was aware of differences in the two time periods of limitation, the issue of discrimination was not presented to or examined by the Court; therefore, it is clear that *M'Elmoyle* only holds that the State of Georgia can apply a reasonable statute of limitations against foreign judgments. It is submitted that the authorities hereinafter discussed clearly demonstrate that such a limitation is unreasonable and a denial of full faith and credit where a longer period is proscribed for domestic judgments.

For example, in *Kenney* v. *Supreme Lodge of the World,* 252 U.S. 411 (1920), the Supreme Court held that a state statute prohibiting actions for death occurring in other states, construed as depriving the courts of the state of jurisdiction of an action on a judgment obtained in another state on a cause of action for death, violated the full faith and credit clause of the United States Constitution. It was argued that since the statute merely withdrew jurisdiction from the former court to entertain suits on foreign judgments, *and since thus the statute merely affected the remedy and not the right,* the statute was not in violation of the full faith and credit clause. In rejecting this argument the Court stated at 414-15:

> "Moreover, no doubt there is truth in the proposition that the Constitution does not require the State to furnish a Court. But it is also true that there are limits to the power of exclusion. . . . [*I*]*t is plain that a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to Courts otherwise competent.*" (Emphasis added)

And in *Christmas* v. *Russell,* 72 U.S. (5 Wall.) 290 (1866), a Mississippi statute provided that where the cause of action which led to the judgment was not barred by the Mississippi statute of limitations on the cause of action, the judgment would be enforced; but if the cause of action would have been barred in the Mississippi tribunals, under her statute, then the suit on the judgment would also be barred. It was held that under the full faith and credit clause, Mississippi had no power to enforce such a statute of limitations. Ob-

viously, the statute of limitations in that case discriminated in favor of judgments based on causes of action which would not have been barred by the Mississippi statute of limitations on the said cause of action. Judgments based on causes of actions which would not have been barred by the Mississippi statute of limitations on causes of actions were favored. Thus, a state may not place a limitation on the remedy (such as a statute of limitations), where that limitation operates in a discriminatory manner in favor of its own interests.

In the case of *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896) (one of the two cases cited by the Georgia Supreme Court[3]), there was some question as to whether plaintiff was suing on a contract or on a foreign judgment recovered by reason of that contract. This Court, after some discussion, decided plaintiff had to be suing on contract since the foreign judgment was invalid by reason of failure of service. This Court then went on to hold that the suit was barred by the forum state's statute of limitations. It was stated at 339:

> "The limitation of actions is governed by the *lex fori*, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions. . . .
>
> "*Neither the statutes nor the decisions of*

[3]The other case, *Metcalf* v. *City of Watertown*, is discussed *infra* at footnote 4, and also supports appellant's contention.

> *the state of Iowa [the forum state] upon this subject have made any discrimination against the citizens, the contracts, or the judgments of other states, or against any right asserted under the constitution or laws of the United States. The case is thus distinguished from Christmas v. Russell, 5 Wall. 290, cited at the bar.*" [Discrimination against certain specific foreign judgments held unconstitutional.] (Emphasis added)

Thus, in this case it was impliedly recognized that if there had been discrimination involved — that is, if the statute of limitations applied against foreign causes of action or judgments had been for a shorter period than the statute of limitations against local causes of action or judgments — such a statute of limitations would be unconstitutional.

It is submitted that the two cases of *Hughes* v. *Fetter*, 341 U.S. 609 (1951) and *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953), read together, emphatically demand a finding that full faith and credit has been denied in the instant case. In *Hughes* v. *Fetter*, 341 U.S. 609 (1951), plaintiff, basing his complaint on an Illinois wrongful death statute, brought an action in a Wisconsin State court to recover damages for the death of a man who was fatally injured in an automobile accident in Illinois. The trial court in Wisconsin held that a Wisconsin statute, which created a right of action only for deaths in that state, established a local policy against Wisconsin's entertaining suits brought under the wrongful death acts of other states and dismissed the action. The Wisconsin Supreme Court affirmed, notwithstanding the contention

that the local statute so construed violated the full faith and credit clause of Article IV, § 1 of the Constitution. This Court stated at 611:

> "We are called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrongful death act. . . . It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent."

The Court went on to hold that Wisconsin was under an obligation to enforce the out-of-state wrongful death cause of action. It was ruled that Wisconsin had no strong policy against wrongful death actions as evidenced by the fact that it allowed an action for wrongful death occurring in Wisconsin, and that consequently, the full faith and credit clause required Wisconsin to enforce the out-of-state cause of action.

Then, in *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) suit was brought in Pennsylvania for a wrongful death action occurring and governed by the laws of Alabama. The Alabama statute of limitations was two years while the Pennsylvania statute of limitations was one year. The action was brought in less than two years, but after one year had passed. The District Court of Pennsylvania had applied the Pennsylvania statute of limitations and dismissed the action. The plaintiff relied on the *Hughes* case, stating that under this case the forum state was required

to enforce an out-of-state wrongful death action. The Court citing *M'Elmoyle* v. *Cohen*, stated that long ago it had held that applying the statute of limitations of the forum to a foreign substantive right did not deny full faith and credit; and it further noted at 517:

> "The rule that the limitations of the forum apply (which this Court has said meets the requirements of full faith and credit) is the usual conflicts rule of the states. . . .
>
> ". . . Our prevailing rule is that the Full Faith and Credit Clause does not compel the forum state to use the period of limitation of a foreign state."

This Court goes on to say, however, at 518:

> "Our decisions in Hughes v. Fetter . . . and First National Bank v. United Air Lines . . . do not call for a change in the well-established rule that the forum state is permitted to apply its own period of limitation. *The crucial factor in those two cases was that the forum laid an uneven hand on causes of action arising within and without the forum state. Causes of action arising in sister states were discriminated against. Here Pennsylvania applies her one-year limitation to all wrongful death actions wherever they may arise.*" (Emphasis added)

It is clear from the *Wells* case that statutes of limitation which discriminate against foreign causes of action or suits on foreign judgments are unconstitutional

under the full faith and credit clause. The state may certainly apply its own statute of limitations as to foreign judgments, but if it does so, it must not discriminate. It cannot give its own judgments a longer period of enforceability than it allows foreign judgments.

Although the requirements of the full faith and credit clause are admittedly less stringent with reference to causes of action than those applicable to judgments, *Hughes* and *Wells* definitely show that the full faith and credit clause, nevertheless, prohibits states from discriminating against *causes of action* arising under the laws of sister states. As it is clear under *Hughes* and *Wells* that a state may not discriminate against foreign causes of action, it necessarily follows that a state may not discriminate against foreign judgments under circumstances in which domestic judgments, rendered at the same time, would be enforced.

Analogous considerations have prohibited this Court from allowing discrimination against Federally created causes of action. A state may not refuse to enforce the laws of another sovereign while enforcing its own similar laws. Thus, while a state court, under the *supremacy clause* (as opposed to the full faith and credit clause) of the Constitution is obligated to enforce Federal law [*Testa* v. *Katt*, 330 U.S. 386 (1947)], on matters going *to the remedy* rather than the right, a state court is under no obligation to enforce Federal law as long as it does not discriminate between Federal law and state law. Consequently, *Mondou* v. *New York, N.H. & H. R.R.*, 223 U.S. 1 (1912), in accord with *Testa*, decided that jurisdiction of an

action to enforce the rights arising under the Federal Employers' Liability Act could not be declined by the courts of the state whose ordinary jurisdiction as prescribed by local laws was adequate to the occasion. In *Douglas* v. *New York, N.H. & H. R.R.*, 279 U.S. 377 (1929), however, the New York State courts had dismissed an action under the Federal Employers' Liability Act brought by a Connecticut resident against a Connecticut corporation based on an accident occurring in Connecticut. A New York statute permitted actions by non-residents against a foreign corporation only in certain classes of cases, of which this was not one. The Court held that New York was not obligated to enforce Federal law in this situation. State and Federal actions were treated equally. In *McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934), an Alabama statute had opened the doors of Alabama courts to suits against foreign corporations arising under the laws of other states. This statute superseded the previous rule of decision that no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action arose in Alabama. The Alabama Supreme Court had dismissed an action based on an out-of-state accident arising under the Federal Employers' Liability Act, holding that the statute lifted the trial bar only for causes of action arising under the laws of sister states. The defendant insisted that the statute as construed was consistent with the Federal Constitution since the state could determine the limits of the jurisdiction of its courts, *i.e.*, in effect, stating that Alabama could regulate the remedy. The Court states at 233-34:

> "While Congress has not attempted to compel states to provide courts for the enforce-

ment of the Federal Employers' Liability Act, Douglas v. New York, New Haven & Hartford R. R. Co. . . . the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. *The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced.* The plaintiff is cast out because he is suing to enforce a federal act. *A state may not discriminate against rights arising under federal laws."*[4] (Emphasis added)

---

[4]The Supreme Court of Georgia cited as authority for its ruling that the full faith and credit clause was not violated, the case of *Metcalf* v. *City of Watertown*, 153 U.S. 671, 14 Sup. Ct. 947 (1894). This case did not involve the applicability of the statute of limitations against foreign judgments. Rather it involved the questions of the constitutionality and the applicable period of limitation against judgments of Federal courts within the forum state. A Wisconsin statute was subject to some ambiguity as to whether judgments of Federal courts were prescribed by the same time period as judgments of the State courts of Wisconsin. There was a Wisconsin Supreme Court case, however, [*Waterman* v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887)] which held that a shorter period of limitations applied to the Federal courts. Notwithstanding this holding, the Court felt that if the Supreme Court of Wisconsin had been faced with this question again they would have decided otherwise. The Supreme Court cites some other Wisconsin authorities which are not directly on point to reinforce its position and then states at 681, 14 Sup. Ct. at 951:

> *"Moreover, it should be observed that the question of the power under the constitution to control in any way or to discriminate as to federal judgments rendered in the state does not seem to have been brought to the attention of the court [in Waterman], and was not adverted to."* (Emphasis added)

The Court further states at 683, 14 Sup. Ct. at 952:

> "We cannot attribute to the legislature of Wisconsin any design to discriminate against the judgments and decrees of the courts of the United States rendered in that state by reducing the statutory period for

By the same token, a state cannot discriminate against judgments taken in other states. Discrimination based merely on the source of the judgment is invalid. A plaintiff should not be defeated merely because he has taken his judgment in another state rather than in the forum state. Although a state has a power to control the remedy by such means as a statute of limitations, it cannot discriminate against judgments of other states in so doing.

It cannot be denied that the State of Georgia has discrimmated against foreign judgments. Following the *Hughes* and *Wells* cases and other authorities heretofore discussed, the conclusion is, therefore, inescapable that Ga. Code § 3-701 (1933) violates the full faith and credit clause.

> "The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

---

the commencement of actions thereon to a less number of years than obtained as to the judgments and decrees of the state courts. . . ."

It is clear from this decision that this Court felt forced to reinterpret a Wisconsin statute, and, in effect, overrule the Wisconsin Supreme Court's interpretation of its own statute, primarily on the basis that any other interpretation would be unconstitutional due to the fact that the other interpretation would effect discrimination against Federal judgments.

Milwaukee County v. *M. E. White Co.*, 296 U.S. 268, 276-7 (1935). To allow the various states to discriminate against foreign judgments by imposing shorter periods of limitation would impair the very purpose and effectiveness of the full faith and credit clause. It is submitted that a substantial Federal question under the full faith and credit clause is presented to this Court, which question should be heard and resolved by this Court in favor of appellant.

B. Georgia Code § 3-701 (1933), Which Provides a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Discriminates Against Those Suitors in Georgia Courts, Who Sue on Foreign Judgments, in Violation of the Equal Protection Clause of the 14th Amendment.

The question of a forum state's refusal to enforce valid foreign judgments has, of course, been before this Court on countless occasions and the resolution of the questions presented in such cases has always been based upon the full faith and credit clause. The precise question presented in this petition has never been before this Court, and, since it involves the State's refusal to enforce a foreign judgment under circumstances when a domestic judgment could be enforced, the Court could, therefore, find substantial historical justification for basing its decision upon the full faith and credit clause. The obvious denial of full faith and credit practiced by Ga. Code § 3-701 (1933) upon holders of foreign judgments should not, however, preclude the Court from considering the applicability of the equal protection clause to the facts of this case.

It appears clear that the language of the equal protection clause — "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws" — clearly contemplates and condemns Georgia's refusal to enforce appellant's judgment when a similarly situated holder of a Georgia judgment would be allowed to enforce his judgment. This is undoubtedly a purposeful and systematic discrimination designed to favor one individual or class over another. *Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949). In order to justify such discrimination, the individuals or classes discriminated against must be the subject of a classification based upon reasonable differences between the favored and disfavored individuals or classes. See, *e.g.*, *Walters* v. *City of St. Louis*, 347 U.S. 231, 237 (1954). No such difference between petitioner and a similarly situated holder of a Georgia judgment has been suggested; certainly only the most fertile imagination could conjure up a reason for the classification found in the Georgia statute. Can justification for the uneven treatment be found in (1) the fact that petitioner holds a foreign rather than a domestic judgment and (2) the fact that petitioner must enforce his judgment by bringing an action in Georgia whereas the holder of a Georgia judgment could enforce simply by levy or other distraint? Certainly, as a practical matter, neither the source of the judgment nor the mode of its enforcement provide reasonable bases for the Georgia classification. In the full faith and credit area the source of the judgment is no reason for classification and it is correspondingly apparent that a discrimination based on the source of the judgment must also constitute a denial of equal protection of the laws. Similarly, the mode which must be employed to enforce the judg-

ment affords no real basis for the Georgia classification. Thus, it is clear that the classification is arbitrary, and the resulting discrimination, therefore, transgresses the equal protection clause.

Although it is vigorously submitted that Ga. Code § 3-701 (1933) violates the full faith and credit clause, appellant believes that the Georgia classification found therein also constitutes a basic and classic example of denial of equal protection of the laws. Indeed, Professor Currie, for one, finds such cases as *Hughes* v. *Fetter*, 341 U.S. 609 (1951) to be most appropriately considered as equal protection cases. He states in his analysis of *Hughes:*

> "The inescapable fact is that Wisconsin, in its wrongful-death statute, established a policy for the protection of Wisconsin residents generally, and then excluded from the protection of that policy a certain class of residents: those whose deaths resulted from injuries received elsewhere. Since no constitutionally tenable policy of the state relating either to the administration of its courts or to any of its other governmental concerns can be suggested which can justify this classification, the classification is arbitrary and capricious. The vice, therefore, of the state action in *Hughes* v. *Fetter* was that it denied to members of the disfavored class the equal protection of the laws. The reliance of the Supreme Court on the full-faith-and-credit clause was both unnecessary and confusing."

Currie, *The Constitution and the "Transitory" Cause of Action*, 73 *HARV. L. REV.* 36, 60-61 (1959). Doubtless, the reliance of the Court upon the full faith and credit clause in the *Hughes* decision has historical justification, but certainly the logic of constitutional theory would be advanced by recognizing that *Hughes* v. *Fetter* is based implicitly upon those concepts inherent in equal protection.

While there are no cases in which the enforcement of judgments has been keyed to the equal protection clause, this Court has in other situations indicated the peculiar applicability of the equal protection clause to the instant case. In *Kentucky Fin. Corp.* v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923), this Court reviewed and reversed a decision of the Supreme Court of Wisconsin. There, a Kentucky corporation brought an action of replevin in Wisconsin to recover an automobile unlawfully taken from its possession by a third person and sold to the defendant in Wisconsin. The plaintiff did no business in Wisconsin. Pursuant to Wisconsin statute, the defendant obtained an order requiring the plaintiff's secretary, who resided and was employed in Louisville, Kentucky, to appear in Milwaukee for pre-trial examination and to bring with him all relevant files and records. When the secretary, with the plaintiff's approval, refused to comply with the order, the complaint was stricken and the action was dismissed. Noting that the Wisconsin statute applied only to foreign corporations and that such an examination could not be ordered with respect to residents of Wisconsin, be they corporation or individual, or to non-resident individuals, the Court asserted:

"No doubt a corporation of one state seeking relief in the courts of another must conform to the prevailing modes of proceeding in those courts and submit to reasonable rules respecting the payment of costs or giving security therefor and the like . . . but it cannot be subjected, *merely because it is such* [foreign] *a corporation, to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations. Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin* — a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary. There could be no reason for requiring a corporate resident of Louisville to send its secretary, papers, files, and books to Milwaukee for the purposes of an adversary examination that would not apply equally to an individual resident of Louisville in a like case. The discrimination is further illustrated by the provision that as to all residents of Wisconsin, individual and corporate, the examination should be had in the county of their residence, no matter what its distance from the place of suit." (Emphasis added)

262 U.S. at 551.

As shown by the above quotation, the precise basis for the decision was that the statute discriminated arbitrarily against foreign corporations. Moreover, the case provides a complete analogy to the instant situa-

tion, where petitioner is denied the right to enforce his judgment in the Georgia courts, because it is a foreign judgment. To paraphrase, he cannot be subjected, simply because he is the holder of a *foreign* judgment "to onerous requirements having no reasonable support in that fact and not laid in other suitors in like situations."

Another of this Court's decisions also provides an analogy to the instant case: *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927). That was a personal injury action by the plaintiff against an Ohio corporation doing business in Arkansas where plaintiff's injury occurred. Defendant had complied with the Arkansas requirements to do business in that state and had designated an agent for service of process as well as a principal office. It did no business and had no officer or agent elsewhere in the state. Suit was filed by the plaintiff in a county other than the designated one which eventually resulted in a judgment for the plaintiff. The Arkansas venue statute allowed suit to be brought against a foreign corporation doing business in Arkansas in any county, but limited the venue of actions against domestic corporations to a county in which it had a place of business or in which its chief officer resided. Actions against individuals were required to be brought in the county where the individual resided or could be found.

This Court found that the Arkansas venue statute denied the foreign corporation equal protection of the laws because it was "very plain that the statutes discriminate against foreign corporations, and in favor of domestic corporations and individuals, and that

the discrimination is not theoretical merely, but real and substantial." 274 U.S. at 493. The Court reasoned:

> "No doubt there are subjects as to which corporations admissibly may be classified separately from individuals and accorded different treatment, and also subjects as to which foreign corporations may be classified separately from both individuals and domestic corporations and dealt with differently. But there are other subjects as to which such a course is not admissible; the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.
>
> "Here the separate classification of foreign corporations is in respect of the venue or place of bringing transitory actions. The statutes mean foreign corporations doing business within the state by her permission, and therefore having a fixed place of business therein and a resident agent on whom process may be served. We speak only of them. *So far as their situation has any pertinence to the venue of transitory actions, it is not distinguishable from that of domestic corporations and individuals. Certainly there is no substantial difference. The opinion of the state court does not point to any relevant distinction, nor have counsel suggested any. Of course the restricted venue as to domestic corporations and individuals is prompted by considerations of convenience and economy; but these considerations have equal application to foreign corporations. So far as*

"the plaintiffs in such actions are affected, it is apparent that there is no more reason for a statewide venue when the action is against a foreign corporation than when it is against a domestic corporation or a natural person. So we conclude that the special classification and discriminatory treatment of foreign corporations are without reasonable basis and essentially arbitrary." (Emphasis added)

274 U.S. at 493-94.

This reasoning is likewise applicable to the present case. There is no reason for discriminating against foreign judgments in favor of domestic judgments by granting a longer period of enforcement for the latter. The only basis for the classification which can be perceived is that the judgments are foreign rather than domestic, and this, of course, is no reason at all. It is then clear that the classification found in Ga. Code § 3-701 (1933) is arbitrary and constitutes a denial of equal protection of the laws guaranteed by the 14th Amendment to the Constitution.[5] It is submitted that a

---

[5]Although it can in truth be said that this portion of the application for an appeal lacks direct decisional support, this dearth of authority is perhaps best explained by Professor Currie:

"Conflict-of-laws cases in which the Equal Protection Clause has been a decisive factor have been rare indeed. Legislatures seldom enact laws for the sole benefit of local citizens or residents; courts are not disposed to interpret laws so as to give such effect. In part this may be true because the effect of the Equal Protection Clause is so clear; in greater part it seems a result of a distaste for discrimination, independent of constitutional prohibitions. It is fair to say that the traditional system of conflict of laws has tended to minimize cases of outright discrimination in the realm of

substantial Federal question under the equal protection clause is presented to this Court, which question should be heard and resolved by this Court in favor of appellant.

CONCLUSION

The jurisdiction of the Supreme Court to review this case on appeal is clear and unquestionable. Appellant urges that the Supreme Court give plenary consideration to the case and permit briefs and oral argument on the merits.

Respectfully submitted,

EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

Of Counsel:
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303.

---

private law, thanks to its utilization of neutral and impersonal choice-of-law rules. It is difficult to cite cases in support of the elementary proposition that a law providing benefits for local citizens must in general provide the same benefits for nonresidents, including aliens, similarly situated."

CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS, 526, 541 (1963).

Of Counsel:
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770,
West Palm Beach, Florida 33402

PROOF OF SERVICE

Emmet J. Bondurant, attorney for Robert D. Watkins, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on this 19 day of January, 1966, I served a copy of the foregoing Jurisdictional Statement on the Appellee therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Martin McFarland, 898 William Oliver Building, Atlanta, Georgia, 30303.

Emmet J. Bondurant,
1045 Hurt Building,
Atlanta, Georgia 30303
Attorney for
Robert D. Watkins, Appellant

APPENDIX A

OPINION BELOW

Supreme Court of Georgia

Decided: September 22, 1965
September Term 1965
108

23070. WATKINS v. CONWAY.

DUCKWORTH, Chief Justice. 1. Full faith and credit as required by the Constitution, Art. IV, Sec. I (Code § 1-401), is not denied foreign judgments by the provision of Code § 3-701, which is: "All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained." 50 CJS, 448 § 873, and cases cited; Metcalf v. Watertown, 132 U. S. 671 (14 SC 947, 38 LE 861); Great Western Tel. Co. v. Purdy, 162 U. S. 329 (16 SC 810, 40 LE 986).

2. Nor is equal protection required by the 14th Amendment (Code § 1-815) denied such judgments because domestic judgments are made valid for seven years (Code Ann. § 110-1001; Ga. L. 1955, pp. 417, 418), and may be revived during dormancy of three years from 7 to 10 years after rendition. Code §§ 110-1002, 110-1003. This law refers solely to enforceability and is unrelated to suits of any kind.

3. We know of no statutory law of this State dealing with suits on domestic judgments, and none has been cited by counsel for plaintiffs in error. Therefore when the legislature dealt with foreign judgments in Code § 3-701 it was dealing with the named class, "foreign

judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Code Ann. § 110-1001, supra.

4. Therefore, the plea of the limitations of Code § 3-701 to this suit on a Florida judgment which was instituted more than five years after the date of that judgment was valid, and the court did not err in sustaining the same and dismissing the suit based upon the Florida judgment.

Judgment affirmed. All the Justices concur except Mobley J., not participating for providential cause.

APPENDIX B

JUDGMENT OF THE COURT BELOW

Supreme Court of Georgia,

Atlanta, September 22, 1965

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Robert D. Watkins v. J. F. Conway.

This case came before this court upon a writ or error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Mobley, J., not participating for providential cause.

BLANK

PAGE